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OFFICE OF THE ATTORNEY GENERAL OF TEXAS
AUSTIN

GERALD C. MANN
ATTORNEY GENERAL

Honorable B. N. Carter
County Attorney
Mitchell County
Colorado, Texas

Dear Sir:

Opinion No. 0-1393-Supplement
Re: Opinion No. 0-1393 does
not include and is not to
be construed as covering
liens or instruments filed
as provided in Article
6644, Revised Civil Stat-
utes, 1925, in favor of
the United States or of
any department or bureau
thereof.

We respectfully refer you to our Opinion No. 0-1393, rendered to you by this department, approved October 20, 1939, pertaining to the payment of filing and recording fees under our general laws covering instruments in favor of agencies or instrumentalities of the Federal government. The opinion holds as follows:

" . . . Such instruments authorized under Article 6627, Revised Civil Statutes, 1925, and presented to the County Clerk for filing and recording by agencies or instrumentalities of the Federal Government, are not exempt from the payment of legal fees, authorized to be charged by the Clerk under the provisions of Article 5930, Revised Civil Statutes, 1925, such fees not being a tax upon the Federal Government."

The attention of this department has been called to an interpretation of this opinion as including and covering such instruments inuring to the benefit of the United States, or any department or bureau thereof, as provided under the provisions of Article 6644, Revised Civil Statutes, 1925. This Article was not considered in the opinion as written, but in view of the misinterpretation of the opin-

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ion as covering said Federal lien record statute, not intended by this department, we feel it necessary to supplement our opinion as formerly written and clarify same with reference to this statute.

Article 6644 provides:

"The county clerk of each county is authorized to, and shall either file, or file and record, as is or may be provided by the laws of the United States, every notice, abstract or statement of any lien or claim, or release or discharge thereof in favor of the United States or of any department or bureau thereof, when any such notice, abstract or statement prepared in conformity to the laws of the United States, is presented to him for filing or filing and recording. The county clerk shall number such notices, abstracts or statements, in the order in which they are filed, and if they are required to be recorded, he shall record them in a well bound book to be styled, 'Federal Lien Record', and in either case he shall index them alphabetically under the names of the persons named therein or affected thereby, such index to be kept in a well bound book styled, 'Index to Federal Liens,' and for the performance of these services he shall not charge a fee, but shall be compensated by the county, as provided for in Article 3931. His failure to file, record or index properly any such notice, abstract or statement as herein required, or to be compensated therefor, shall not affect the validity or legality of any such lien or claim, or release or discharge thereof."

It will be noted that the above statute provides that in the performance of the services mentioned therein, the County Clerk shall not charge a fee. The express language of the statute makes it the duty of the County Clerk to perform the services free of charge, and the question of compensating the County Clerk does not, in any wise, release the County Clerk from the performance of the duties in the manner therein prescribed. In considering this statute which provides that every notice, abstract, or statement of any lien or claim or release or discharge thereof in favor of the United States, or of any department or bureau thereof, shall be filed or filed and recorded by the County Clerk, free of charge, a distinction is to be drawn between those instruments and ones inuring to the

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benefit of mere agencies and instrumentalities of the Federal Government, such as Home Owners' Loan Corporation, Federal Savings and Loan Associations, Federal Land Banks, and National Banks.

You are, therefore, respectfully advised that our Opinion No. 0-1393, rendered by this department, and approved October 20, 1939, does not include or affect such notice, abstract, or statement or any lien or claim, or release or discharge thereof, in favor of the United States, or any department or bureau thereof, required to be filed or filed and recorded by the County Clerk free of charge in the "Federal Lien Record" as provided under Article 6644, Revised Civil Statutes, 1925. Opinion No. 0-1393 applies only to such instruments of agencies, or instrumentalities of the Federal Government in which such agencies or instrumentalities alone have a beneficial interest to the exclusion of the United States Government proper, any department or bureau thereof.

Yours very truly

ATTORNEY GENERAL OF TEXAS

By

Wm. J. King
Wm. J. King
Assistant

WmK:FG

APPROVED JAN 11, 1940
George B. Mason
ATTORNEY GENERAL OF TEXAS

